

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



October 29, 2003

Agenda ID #2900
Quasi-Legislative

TO: PARTIES OF RECORD IN RULEMAKING 02-11-039

This is the draft decision of Administrative Law Judge (ALJ) Mattson. It will not appear on the Commission's agenda for at least 15 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 77.7(f)(2), the period for public review and comment is reduced. Comments on the draft decision must be filed and served within five days of today, and reply comments within three days of the date comments are filed.

Parties to the proceeding may file and serve comments on the draft decision consistent with the reduced comment period, as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Service may be by electronic mail, with service of a paper copy on persons without an electronic mail address, those who request paper service, and the ALJs. (See Scoping Memo dated February 19, 2003, Ordering Paragraph 10.) Finally, comments must be served separately on the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:sid

Attachment

Decision **DRAFT DECISION OF ALJ MATTSON** (Mailed 10/29/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking to implement the provisions of
Public Utilities Code § 761.3 enacted by
Chapter 19 of the 2001-02 Second Extraordinary
Legislative Session.

Rulemaking 02-11-039
(Filed November 21, 2002)

ORDER MODIFYING RESPONDENTS

On November 21, 2002, the Commission opened this proceeding and named eight respondents. On September 4, 2003, the Commission named 16 additional respondents. (Decision (D.) 03-09-002.) On October 2, 2003, the Commission deleted two respondents. (D.03-10-012.)

Each of the 16 additional respondents was directed to review the appearance information and seek corrections or changes by motion within 10 days (i.e., by September 15, 2003). (Ordering Paragraph 2, D.03-09-002.) By motion filed and served on October 6, 2003, Andrew B. Brown for High Desert Power Project, LLC (HDPP) seeks leave to file the motion late, and requests an order granting corrections and changes to the service list. No responses have been filed. Leave for HDPP to file the motion late is granted.¹

¹ HDPP is not a party, and consequently does not have standing to file a motion. We permit the motion to be filed, however, based on the requested relief. (Rules 45(c) and 87 of the Commission's Rules of Practice and Procedure.)

Regarding corrections and changes, HDPP first moves to delete the appearance of Thomas M. Barnett for Constellation Generation Group (CGG), and replace that appearance with one by Dave Boward for HDPP located in Victorville, California. The motion is granted, and HDPP is named a respondent.² We do this in concert with the motion, which says:

“Now that High Desert Power Project is operating as a new, clean, state-of-the-art generation facility, and in light of the Commission’s apparent desire to have the service list reflect entities potentially subject to § 761.3 [footnote deleted], it is appropriate to correct the service list to reflect participation by HDPP rather than CGG.” (Motion, page 3.)

Service of documents in this proceeding is by electronic mail, with limited exceptions.³ To facilitate service, HDPP should serve a letter on the Commission’s Process Office, with a copy on the service list, providing an electronic mail address for Boward, if one is available.⁴

² CGG was a named respondent. In granting the motion to replace CGG with HDPP, we apply the same status to HDPP. As do several respondents, HDPP states that it reserves its rights to challenge, in the appropriate forum, any assertions by the Commission of jurisdiction over HDPP. Further, HDPP contends that, by voluntarily participating before the Commission, it in no way waives any rights or arguments.

³ For example, service of a paper copy of each document and pleading filed in this matter is required only on each person on the service list who does not have an electronic mail address, and on each person who requests paper service (including the Administrative Law Judges (ALJs) to which this proceeding is assigned). (Scoping Memo and Ruling dated February 19, 2003, Ordering Paragraph 10.)

⁴ Service of the letter may be by electronic mail.

The deletion of Barnett for CGG leaves Brown as the sole appearance for CGG. Brown moves, however, to revise his appearance for CGG to be an appearance for HDPP. The motion is granted.

The appearance of Brown for CGG was taken at the February 10, 2003 Prehearing Conference, and CGG became a party to this proceeding. (Reporter's Transcript, page 11.) CGG was named a respondent in September 2003 based on an understanding that CGG is an electrical corporation, or owner or operator of divested plant in California subject to § 761.3.⁵ (D.03-09-002.)

Brown now states:

“CGG does not own or operate generation, transmission or distribution facilities in California or anywhere else. It is merely a holding company. Furthermore, none of its subsidiaries own or operate generation, transmission or distribution facilities in California...*In summary, CGG has no ownership interests, direct or indirect, whatsoever in HDPP or any other entities contemplated under § 761.3, and is not an ‘electrical corporation’ under California law.*” (HCPP Motion, page 2, emphasis in original.⁶)

An “electrical corporation” includes “every corporation or person owning, controlling, operating, or managing any electric plant for compensation within”

⁵ All statutory references are to the Public Utilities Code unless noted otherwise.

⁶ All pleadings are filed in compliance with Rule 1 of the Commission's Rules of Practice and Procedure (Rules). As a result, we rely on the fact that Brown, as the appearance for CGG, is authorized to make this statement on behalf of CGG, even though the instant pleading is not filed on behalf of CGG. Moreover, we rely on the truth of all statements in the pleading.

California, with limited exceptions.⁷ (§ 218(a).) We conclude that CGG does not own, control, operate or manage any electric plant (including divested plant) for compensation within California, and is not an electrical corporation subject to § 761.3. Therefore, we delete CGG as a respondent. Further, we grant the motion to change the appearance of Brown for CGG to an appearance for HDPP.

Reduction in Comment Period

This decision is on “an uncontested matter where the decision grants the relief requested.” (Rule 77.7(f)(2).) As a result, we may reduce or waive the period for public review and comment. We reduce the public review and comment period. The draft decision of ALJ Mattson was filed and served on October 29, 2003. Parties were informed that comments were due within five days, and reply comments within three days. Comments were filed and served on ____ by _____, and reply comments were filed and served on ____ by _____.

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner. Burton W. Mattson is the assigned ALJ in this portion of this proceeding.

⁷ Exceptions include (a) where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others, (b) facilities employing cogeneration technology or producing power from other than a conventional power source for specific purposes, (c) facilities employing landfill gas technology for the generation of electricity for specific purposes, (d) facilities employing digester gas technology for the generation of electricity for specific purposes, and (e) facilities employing cogeneration technology or power production from other than a conventional power source for the generation of electricity physically producing electricity prior to January 1, 1989 and furnishing that electricity to immediately adjacent real property for use thereon prior to January 1, 1989. (§§ 218(a) - (e).)

Findings of Fact

1. On October 6, 2003, HDPP filed and served a motion, no responses have been received, and the motion is uncontested.
2. HDPP is a new generating facility in California.
3. CGG does not own, control, operate or manage any electric plant for compensation in California.

Conclusions of Law

1. The October 6, 2003 motion of HDPP should be granted as provided herein.
2. CGG is not electrical corporation subject to § 7613.
3. This order should be effective immediately to correct respondent status, and the service list, without delay.

IT IS ORDERED that:

1. Leave is granted to High Desert Power Project, LLC (HDPP) to file its October 6, 2003 motion late. The motion to delete and replace appearances is granted as follows. The appearance of Thomas M. Barnett for Constellation Generation Group (CGG) is deleted and replaced with the appearance of Dave Boward for HDPP. HDPP is named a respondent, and the appearance for HDPP is:

Dave Boward
General Manager
High Desert Power Project, LLC
19000 Perimeter Road
Victorville, CA 92394

2. Within five days of the date of this order, HDPP shall serve a letter on the Commission's Process Office, with service on the service list, providing Boward's

electronic mail address for receipt of documents, if one is available for this purpose.

3. The motion to revise the appearance of Andrew B. Brown from that for CGG to HDPP is granted. CGG is deleted as a respondent, and removed from the service list.

4. The Commission's Process Office will, as soon as reasonably possible, make these changes to the service list, and post the updated service list on the Commission's web page.

5. The proceeding remains open.

This order is effective today.

Dated _____, at San Francisco, California.